

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

United States of America,)	ORDER DIRECTING THE CLERK OF COURT TO RETURN THE APPELLATE FILING FEE
)	
Plaintiff,)	
)	
vs.)	Case No. 1:08-mc-006
)	
Sebastian Joseph Feist,)	
)	Case No. 1:08-mc-006
Defendant.)	

On April 28, 2008, the defendant, Sebastian Joseph Feist, moved for a writ of audita querela. See Docket No. 2. On November 10, 2008, the Court denied Feist's motion. See Docket No. 8. On December 1, 2008, Feist appealed the Court's order denying his motion for a writ of audita querela. See Docket No. 9. On December 29, 2008, Feist submitted an application requesting to proceed in forma pauperis on appeal. See Docket No. 11. Feist submitted a declaration that made the required showing of indigent status under 28 U.S.C. § 1915(a). The Court granted Feist's motion and assessed a partial filing fee of \$13.40. See Docket No. 13.

On October 2, 2009, the Eighth Circuit Court of Appeals issued a decision in the case. See Docket Nos. 19 and 20. The Eighth Circuit affirmed this Court's ruling as to Feist's motion for a writ of audita querela, stating, "The district court correctly found that it lacked jurisdiction to consider a [28 U.S.C. § 2241] petition brought by Feist." See Docket No. 19. However, the Eighth Circuit determined that "the filing-fee provisions of the [Prison Litigation Reform Act] are inapplicable here. Cf. Malave v. Hedrick, 271 F.3d 1139, 1139-40 (8th Cir. 2001) (per curiam) ([Prison Litigation Reform Act] is inapplicable to habeas corpus actions). We thus agree with Feist that the district court erred in imposing a payment schedule to collect the appellate filing fee." See Docket No. 19. The Eighth Circuit vacated this Court's order for payment of the appellate filing

fee (Docket No. 13) and directed that “any part of the fee Feist has paid be returned to him.” See Docket No. 19. In accordance with the Eighth Circuit’s decision, the Court **DIRECTS** the Clerk of the District Court to return to Feist any part of the appellate filing fee that he has paid in this action.

IT IS SO ORDERED.

Dated this 28th day of October, 2009.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court